

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 23, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Consent to Refinance Certificate of Participation (COPS) for the No. 1 Capitol District State Office Building and Approve the First Amendment to the Lease Purchase Agreement and Related Documents (e.g., the Accompanying Memorandum of Amendment of Lease Purchase Agreement) between the Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, Honolulu, Oahu, Tax Map Key: (1) 2-1-17:1

Consent to Refinance Certificate of Participation (COPS) for the Kapolei State Office Building, and Approve the First Amendment to Lease Agreement and Related Documents (e.g., the Consent, Joinder and Agreement forms and the Memorandum of First Amendment to Lease Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, Kapolei, Oahu, Tax Map Key: (1) 9-1-88:5

APPLICANT:

Department of Budget and Finance on behalf of the Department of Accounting and General Services.

LEGAL REFERENCE:

Section 37D, 107-10, 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Lands situated at Honolulu, Oahu, identified by Tax Map Key: (1) 2-1-17:1 and lands situated at Kapolei, Oahu, identified by Tax Map Key: (1) 9-1-88:5, as shown on the attached map labeled Exhibit A.

AREA:

2.008 acres, more or less.

7.145 acres, more or less.

TRUST LAND STATUS:

Acquired after Statehood

DHHL 30% entitlement lands pursuant to the Hawaii State

Constitution: YES _____ NO __x__

CHARACTER OF USE:

State office space.

REMARKS:

The Department of Budget and Finance (B&F) is currently pursuing refinancing opportunities for two outstanding Certificates of Participation (COPs). The COPs were issued by the State to finance the acquisition of the following buildings:

1. No. 1 Capitol District State Office Building
\$23,140,000 Certificates of Participation, 2000 Series A

The Department of Accounting and General Services (DAGS) had entered into a lease purchase agreement for the land and building with the prior owner BIGI, whereby COPs were issued by the State to fund the acquisition of the land and improvements. BIGI Corporation assigned its fee interest in the land and building to the COP trustee and upon the full payment of the COPs by the State, the fee title to the land and improvements will transfer to the State.

2. Kapolei State Office Building
\$54,580,000 Certificates of Participation, 1998 Series A

The Estate of James Campbell issued a ground lease to the developer, who constructed the building. The fee title to the land was deeded to the State, which then entered into a sublease with the developer for the land and improvements. The developer assigned its interest in the ground lease and the sublease to the COP trustee, who now holds title to the ground lease and is the sublessor under the sublease, but upon the full payment of the COP by the State, the fee title to the land and building will continue to be held by the State, but unencumbered by the existing ground lease and sublease.

B&F is currently in the process of refunding (refinancing) the two (2) COPs previously issued and mentioned above to take advantage of lower interest rates and generate debt service savings to the State. It is also necessary to amend the leases to revise the

existing payment schedule to correspond to the 2009 certificates of participation. Accordingly, the Board is asked to approve the aforesaid refinancing transactions, the First Amendment of Lease or Lease Purchase Agreements (as the case may be) and Related Documents (e.g., any Consent, Joinder, and Agreement, and any Memorandum of First Amendment of Lease). The respective documents are attached hereto as Exhibits.

RECOMMENDATION: That the Board:

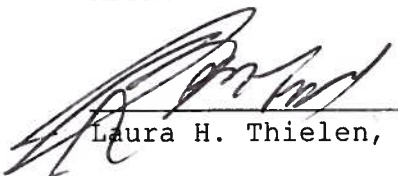
- A. Consent to the refinance of Certificate of Participation for the No. 1 Capitol District State Office Building and Approve the First Amendment to Lease Purchase Agreement and Related Documents (e.g., the accompanying Memorandum of First Amendment to Lease Purchase Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, and
- B. Consent to the refinance of Certificates of Participation for the Kapolei State Office Building and Approve the First Amendment to Lease Agreement and Related Documents (e.g., the Consent, Joinder and Agreement forms and the accompanying Memorandum of First Amendment to Lease Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, subject to the following:
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

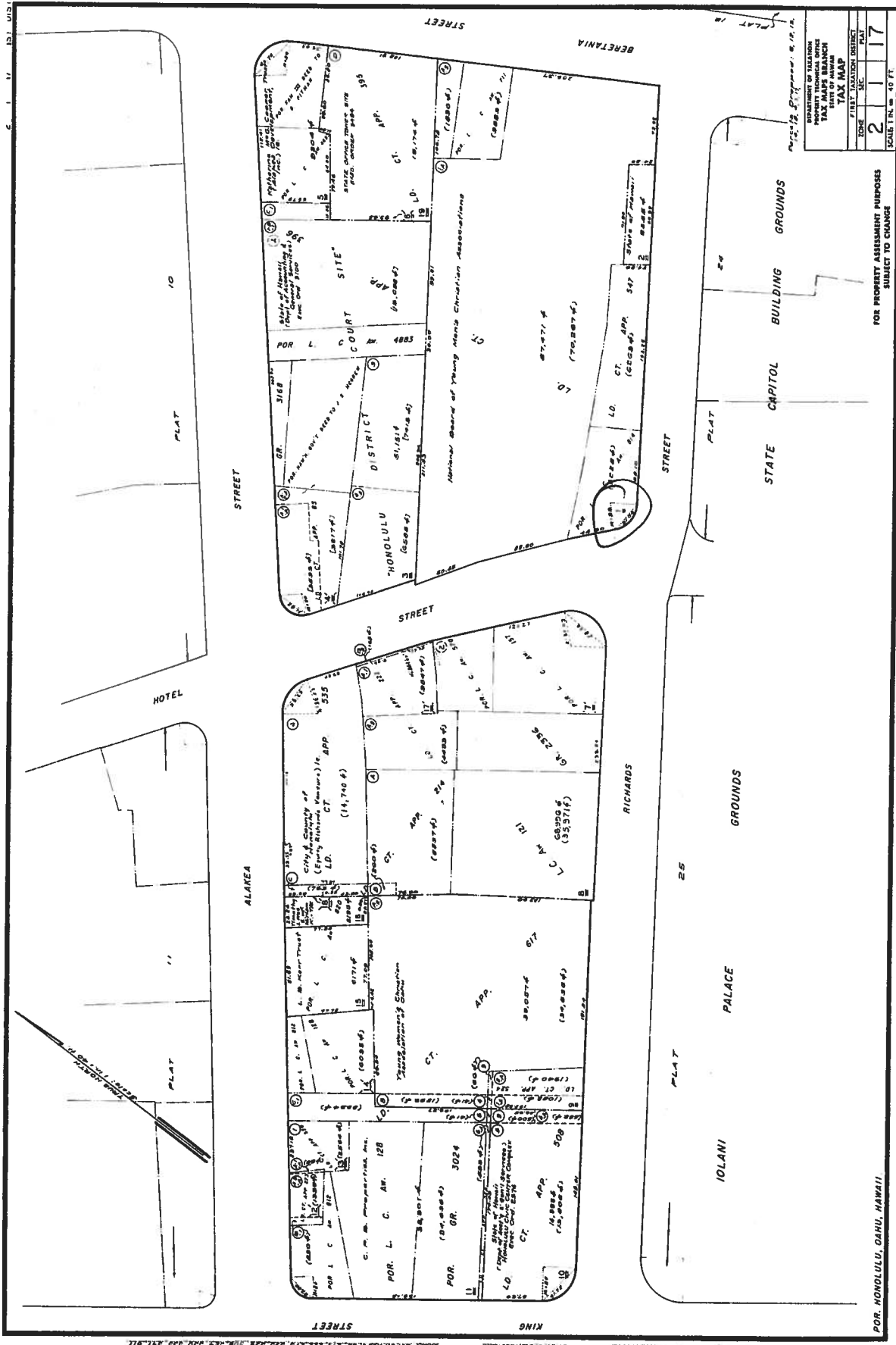
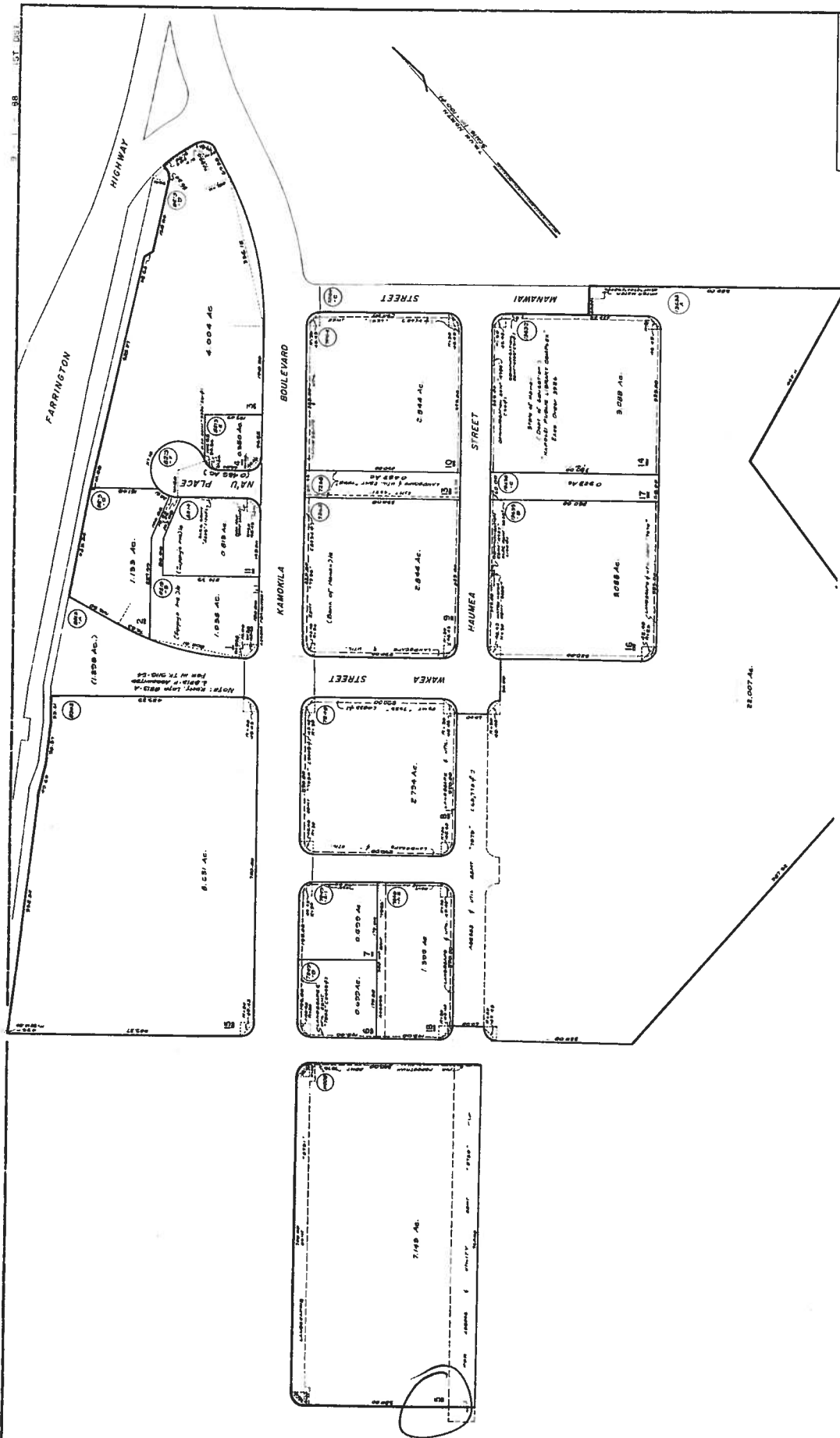


EXHIBIT "A"



STATE OF HAWAII
by its
Department of Accounting and General Services

FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

"Lessor"

and

STATE OF HAWAII
by its
Department of Accounting and General Services

"Lessee"

dated as of November 1, 2009

covering

- (i) Lot A-2, area approximately 1,830 square feet, as shown on Map 3 filed with Land Court Application 395;
- (ii) Land shown on Map 1, filed with Land Court Application 547, containing an area of approximately 6,263 square feet;
- (iii) Lot 1-A, area approximately 70,267 square feet, as shown on Map 3 filed with Land Court Application 396;
- (iv) Portion of land covered by Royal Patent 39, Land Commission Award 814 to Kapahukepau, and a portion of Royal Patent 57, Land Commission Award 3658 to Charlotte A. Hooper and containing an area of approximately 5,228 square feet,
- (v) Portions of land covered by Royal Patents 48 and 4461, Land Commission Award 711 to Kailiwai and containing an area of approximately 3,883 square feet.

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FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT (this "First Amendment to Lease") dated as of November 1, 2009, by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "Lessor"), whose address is 700 South Flower Street, Suite 500, Los Angeles, California 90017, and the STATE OF HAWAII, by its Department of Accounting and General Services (the "Lessee"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813;

WITNESSETH

WHEREAS, the State and BIGI Corporation (the "Capitol District Lessor") entered into an unrecorded Lease Purchase Agreement dated as of December 1, 2000 (the "Lease"), for which a Memorandum of Lease Purchase Agreement was recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-176008 and also filed in the Office of the Assistant Registrar of the State of Hawaii as Document No. 2670817 and noted on Transfer Certificate of Title No. 696,237, whereby the Capitol District Lessor leased the premises described therein (the "Project") to the State, as Lessee, in the manner and on the terms set forth therein; and

WHEREAS, under the Lease the Lessee is obligated to pay the Lease Payments to the Capitol District Lessor for the use and possession of the Project; and

WHEREAS, for the purpose of obtaining moneys for the acquisition of the Project, the Capitol District Lessor assigned and transferred to the predecessor to The Bank of New York Mellon Trust Company, N.A. (the "Prior Capitol District Trustee"), as assignee, by the terms of an Assignment Agreement and Acknowledgment dated as of December 1, 2000, between the Capitol District Lessor and the Prior Capitol District Trustee, and recorded as aforesaid as Document No. 2000-176010 and also filed as aforesaid as Document No. 2670819 and noted on the foregoing Transfer Certificate of Title (the "Assignment"), all of its rights and obligations under the Lease, including without limitation the right to receive Lease Payments; and

WHEREAS, in consideration of such assignment and certain other consideration, the predecessor to the Prior Trustee has previously executed and delivered certificates of participation (the "2000 Certificates"), pursuant to the Trust and Disbursement Agreement, dated as of December 1, 2000 (the "Prior Trust Agreement"), by and among the Lessee, the Prior Trustee, as trustee, and the Prior Trustee, as assignee, in an amount equal to the aggregate principal components of the Lease Payments due and payable under the Lease, each evidencing and representing a fractional undivided interest in such Lease Payments; and

WHEREAS, all rights, title and interest of Prior Trustee in the Lease and in the Prior Trust Agreement, including all rights to receive the Lease Payments (as defined under the Lease), have been assigned without recourse by the Prior Trustee to the BNY Western Trust Company, a state chartered trust company ("BNY") pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "BNY Assignment"), and Land Court Order No. 156225 was issued to note BNY as the successor trustee under the Prior Trust Agreement on the foregoing Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, by virtue of the BNY Assignment and the Land Court Orders referenced above, The Bank of New York Mellon Trust Company, N.A., is qualified to enter into this Lease Amendment, as Lessor; and

WHEREAS, the State has now determined that it would be beneficial to the State to refund the 2000 Certificates; and

WHEREAS, in order to finance such refunding, the State and The Bank of New York Mellon Trust Company, N.A., as current trustee (the "2009 Trustee") have determined to issue under the Prior Trust Agreement (as amended and restated by the Amended and Restated Trust Agreement dated as of November 1, 2009 (the "2009 Trust Agreement")), certificates of participation in the Lease (the "2009 Series A Certificates"), each evidencing a fractional undivided interest in the combined amount of the Lease Payments and certain other rental payments; and

WHEREAS, pursuant to Section 12.04 of the Lease and Section 6.02 of the Prior Trust Agreement, the Lease may be amended as may be mutually agreed by the Lessee and the Lessor, subject to the approval of the Director of Finance and the Attorney General of the State, for the purpose of the execution and delivery of Additional Certificates (as such term is defined under the Prior Trust Agreement); and

WHEREAS, in connection with the above referenced refunding the Lessor and the Lessee desire to amend the Lease in order to amend the original Lease Payment schedule; and;

WHEREAS, Lessor and Lessee are authorized under the Prior Trust Agreement (including the 2009 Trust Agreement) and under Constitution and laws of the State of Hawaii, including but not limited to Chapter 37D, Hawaii Revised Statutes (the "Act"), to enter into this Lease Amendment for the purposes and subject to the terms and conditions set forth herein, and the Lessee is entering into this Lease under and in compliance with the Act;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Terms not otherwise defined herein which are defined in the Lease shall have the meanings assigned to them therein.

ARTICLE II

AMENDMENTS TO LEASE

Section 2.01. References to Lessor under the Lease. All references to the Lessor under the Lease shall be amended to refer to The Bank of New York Mellon Trust Company, N.A.

Section 2.02. Amendments of Exhibit A of the Lease. Exhibit A of the Lease ("SCHEDULE OF LEASE PAYMENTS") is hereby amended and restated as set forth in Exhibit A attached hereto.

Section 2.03. Amendments of Section 12.11. The reference to the contact information for the Lessor and the Trustee, respectively, in Section 12.11 of the Lease shall be amended as follows:

Lessor: The Bank of New York Mellon Trust Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Administration

Trustee: The Bank of New York Mellon Trust Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Administration

Section 2.04. Amendments of Section 4.01. The first paragraph of Section 4.01 of the Lease is hereby amended and restated in its entirety as follows:

The Lessee shall pay or cause to be paid to the Lessor (or assigns) Lease Payments for the Project in the amounts set forth in Exhibit A hereto. Lease Payments must be deposited by the Lessee with the Trustee not later than the Business Day prior to each Lease Payment Date. Interest shall be payable on the overdue interest and principal components of the Lease Payments and on overdue prepayment premiums, if any, at the interest rate per annum allocable to the interest component of the related Lease Payment and shall be payable until such overdue principal, premium or interest, as the case may be, is paid or made available for payment. The parties hereto have agreed and determined that the Lease Payments represent the fair rental value of the Project.

ARTICLE III

MISCELLANEOUS

Section 3.01. Reaffirmation of Covenants and Representations in the Lease. The Lessor and Lessee hereby reaffirm the covenants and representations contained in the Lease.

Section 3.02. Execution in Counterparts. This First Amendment to Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.03. Effectiveness of Other Provisions of the Lease. Except as amended hereby, all of the other provisions of the Lease shall continue to be effective as the Lease was originally executed and delivered.

IN WITNESS WHEREOF, Lessor has executed this First Amendment to Lease in its name and Lessee has caused this First Amendment to Lease to be executed in its name, all as of the date first above written.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as Lessor

By: _____
Title: _____

STATE OF HAWAII

By _____
Department of Accounting and General Services

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Attorney General

Approved:

BOARD OF LAND AND NATURAL
RESOURCES

By _____
Its Chairperson and Member

Approved by the Board of Land and
Natural Resources at its meeting held
on _____, Item _____

EXHIBIT A
AMENDED SCHEDULE OF LEASE PAYMENTS

Date	Principal Component	Interest Component	Annual Lease Payment
5/1/2010	\$173,454	\$275,513	\$448,967.21
11/1/2010	-	336,695	-
5/1/2011	241,725	280,127	858,548.14
11/1/2011	-	339,653	-
5/1/2012	1,328,102	277,885	1,945,639.23
11/1/2012	-	311,725	-
5/1/2013	1,384,603	248,888	1,945,215.75
11/1/2013	-	282,681	-
5/1/2014	1,444,989	216,734	1,944,404.18
11/1/2014	-	246,493	-
5/1/2015	1,515,805	180,588	1,942,885.29
11/1/2015	-	212,221	-
5/1/2016	1,585,516	145,563	1,943,299.89
11/1/2016	-	172,567	-
5/1/2017	1,662,367	106,887	1,941,820.77
11/1/2017	-	128,092	-
5/1/2018	1,747,050	65,344	1,940,485.96
11/1/2018	-	73,300	-

5/1/2019	1,795,000	73,300	1,941,600.00
11/1/2019	-	37,400	-
5/1/2020	1,870,000	37,400	1,944,800.00

EXHIBIT B

DESCRIPTION OF REAL PROPERTY

FIRST:

All of that certain parcel of land situate on the lower or southwest side of Beretania Avenue near Alakea Street, Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT A-2, area 1,830.0 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 395;

-SECOND:-

All of that certain parcel of land situate in Honolulu, City and County of Honolulu, State of Hawaii, containing an area of 6,263 square feet, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 547;

-THIRD:-

All of that certain parcel of land situate at Honolulu, City and County of Honolulu, State of Hawaii, described as follows:

LOT 1-A, area 70,267 square feet, more or less, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 396;

-FOURTH:-

All of that certain parcel of land (being portion(s) of the land described in and covered by Royal Patent Number 39, Land Commission Award Number 814 to Kapahukepau and Royal Patent Number 57, Land Commission Award Number 3658 to Charlotte A. Hooper) situate, lying and being on the north corner of Hotel and Richards Streets at Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey of Towill, Shigeoka & Associates, Inc., to-wit:

Beginning at a spike at the northwest corner of this parcel of land, being also the southwest corner of Lot 1-A of Land Court Application 396 (Map 3) and on the northeast side of Hotel Street and running by azimuths measured clockwise from true South:

1. 243° 25' 58.00 feet along Lot 1-A of
Land Court Application 396;
2. 240° 40' 47.50 feet along Lot 1-A of Land Court
Application No. 396;
3. 327° 30' 49.80 feet along Lot 1-A Land Court
Application 396 and Land Court
Application 547;
4. 55° 10' 68.10 feet along the northwest side of
Richards Street;
5. Thence along the northerly side of Richards Street on a curve to the right with a
radius of 25.00 feet, the chord
azimuth and distance being: 93° 32'
30" 31.04 feet;
6. 131° 55' 44.55 feet along the northeast
side of Hotel Street to
the point of beginning
and containing an area of
5,228 square feet, more
or less.

-FIFTH:

All of that certain parcel of land (being portion(s) of the land described in and covered by Royal Patents Numbers 48 and 4461, Land Commission Award Number 711 to Kailiwai) situate, lying and being on the southwest side of Beretania Street, Honolulu, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey of Towill, Shigeoka & Associates, Inc., to-wit:

Beginning at the southeast corner of this parcel of land, being also the northeast corner of Lot 1-A of Land Court Application 396 (Map 3) and on the southwest side of Beretania Street, the direct azimuth and distance from a "+" cut on concrete at the southwest corner of Beretania and Richards Streets being: 148° 39' 137.29 feet and running by azimuths measured clockwise from true South:

1. 58° 35' 85.16 feet along Lot 1-A of
Land Court Application 396;

- | | | | |
|----|----------|-------|---|
| 2. | 143° 40' | 46.00 | feet along Lot 1-A of
Land Court Application
396; |
| 3. | 240° 12' | 89.20 | feet along Lot A-2 of
Land Court Application
395; |
| 4. | 328° 39' | 43.32 | feet along the southwest
side of Beretania Street
to the point of beginning
and containing an area of
3,883 square feet, more
or less. |

Items First through Third above are described in Transfer Certificate of Title No. 696,237.

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()

State of Hawaii Department of Accounting
and General Services
1151 Punchbowl Street
Honolulu, Hawaii 96813

Total No. of Pages: ____

Tax Map Key No.: (1) 2-1-017-001

**MEMORANDUM OF FIRST AMENDMENT TO
LEASE PURCHASE AGREEMENT**

THIS MEMORANDUM OF FIRST AMENDMENT TO LEASE PURCHASE AGREEMENT (this "**Memorandum**") is made this _____ day of _____, 20____ by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association (the "**Lessor**"), whose address is at 700 South Flower Street, Suite 500, Los Angeles, California 90017 and the STATE OF HAWAII, by its Department of Accounting and General Services (the "**Lessee**"), whose address is at 1151 Punchbowl Street, Honolulu, Hawaii 96813.

W I T N E S S E T H

WHEREAS, BIGI Corporation, as lessor and Lessee as the lessee executed a Lease Purchase Agreement dated December 1, 2000 (the "**Lease**"), for which a Memorandum of Lease Purchase Agreement dated as of December 14, 2000 was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2670817 and noted on Transfer Certificate of Title 696,237 and also recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-176008 ("**Memorandum of Lease Agreement**"); and

WHEREAS, all right, title and interest of BIGI Corporation as lessor under the Lease was assigned without recourse to Bank of Hawaii, as trustee, pursuant to that certain Assignment Agreement dated as of December 1, 2000, filed as aforesaid as Document No.

2670819 and noted on said Transfer Certificate of Title, and also recorded as aforesaid as Document No. 2000-176010; and

WHEREAS, all rights, title and interest of Bank of Hawaii, as lessor under the Lease, including all rights to receive the Base Rental Payments and the Additional Rental Payments (each as defined under the Lease), was assigned without recourse to BNY Western Trust Company ("**BNY**"), pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "**BNY Assignment**"), and Land Court Order No. 156225 was issued to note BNY as the successor trustee on said Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, the Lessor, as the current lessor under the Lease, and the Lessee have entered into a First Amendment to Lease Purchase Agreement dated as of November 1, 2009;

NOW, THEREFORE, this Memorandum witnesseth that:

A. The Lessor and Lessee have executed that certain unrecorded First Amendment to Lease Purchase Agreement dated as of November 1, 2009 (said First Amendment to Lease Purchase Agreement is hereinafter referred to as the "**First Amendment**" and the Lease together with First Amendment is hereinafter collectively referred to as the "**Amended Lease**"). The terms and conditions of the First Amendment are incorporated by reference as if herein specifically set out in full.

B. The Amended Lease constitutes a Financing Agreement under Chapter 37D of the Hawaii Revised Statutes.

C. The Amended Lease shall remain in full force and effect and shall be enforceable in accordance with its terms and is hereby ratified, confirmed and approved.

This instrument may be executed in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Each party has the right to rely upon a facsimile counterpart or electronic transmission of this instrument signed by the other party to the same extent as if such party received an original counterpart. For all purposes, including, without limitation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

IN WITNESS WHEREOF, the undersigned parties have executed this Memorandum of First Amendment of Lease Purchase Agreement as of the date first above written.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,
a national banking association

By: _____
Name:
Title:
Lessor

STATE OF HAWAII,

By: _____
Department of Accounting and General Services

Lessee

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____ Date: _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____ Date: _____
Attorney General

Approved:

BOARD OF LAND AND NATURAL
RESOURCES

By _____
Its Chairperson and Member

Approved by the Board of Land and
Natural Resources at its meeting held
on _____, Item _____

STATE OF CALIFORNIA

)

) ss.:

COUNTY OF _____

)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this _____ page instrument entitled Memorandum of First Amendment to Lease Purchase Agreement, dated as of _____, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of California

My Commission Expires:

STATE OF HAWAII)
) ss.:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this _____ page instrument entitled Memorandum of First Amendment to Lease Purchase Agreement, dated as of _____, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of Hawaii
First Circuit

My Commission Expires:

STATE OF HAWAII
by its
Department of Accounting and General Services

FIRST AMENDMENT TO LEASE AGREEMENT

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

“Lessor”

and

STATE OF HAWAII
by its
Department of Accounting and General Services

“Lessee”

dated as of November 1, 2009

covering

Lot 11000, as shown on Map 820, filed in
the Land Court in Application No. 1069,
consisting of approximately 7.145 acres,
District of Ewa, City and County of Honolulu, State of Hawaii

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FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "First Amendment to Lease") dated as of November 1, 2009, by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "Lessor"), whose address is 700 South Flower Street, Suite 500, Los Angeles, California 90017, and the STATE OF HAWAII, by its Department of Accounting and General Services (the "Lessee"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813;

W I T N E S S E T H

WHEREAS, the Trustees under the Will and of the Estate of James Campbell, Deceased, acting in their fiduciary and not in their individual capacities ("Campbell Estate"), and KCCD LP, a Hawaii limited partnership (the "Kapolei Lessor") entered into Lot 11000 Ground Lease (the "Original Groundlease"), dated as of April 1, 1997, a Short Form Lot 11000 Groundlease of which was dated April 1, 1997 and filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2376563 and noted on Transfer Certificate No. 496,527, whereby Campbell Estate leased the land more particularly described in Exhibit "B" attached hereto (the "Site") and transferred certain other property rights to Kapolei Lessor on the terms and conditions set forth therein; and

WHEREAS, on July 28, 1997, by City of Kapolei Limited Warranty Deed with Covenants, Conditions, Restrictions and Encumbrances filed as aforesaid as Document No. 2399297 and noted on said Transfer Certificate of Title, Campbell Estate conveyed the Site to the State of Hawaii (the "State"); and

WHEREAS, the State and the Kapolei Lessor entered into the Amended and Restated Groundlease (the "Groundlease"), dated as of November 1, 1998, which amended and restated the Original Groundlease in its entirety, for which a Short Form Amended and Restated Ground Lease was filed as aforesaid as Document No. 2500489 and noted on said Transfer Certificate of Title; and

WHEREAS, Kapolei Lessor subleased to the Lessee, and Lessee has subleased from the Lessor, the Site, together with the Improvements pursuant to a Lease Agreement, dated as of November 1, 1998 (as amended and supplemented, the "Lease"), for which a Short Form Lease dated as of November 1, 1998 was filed as aforesaid as Document No. 2500491 and noted on said Transfer Certificate of Title; and

WHEREAS, under the Lease, the Lessee is obligated to make base rental and additional rental payments to the Kapolei Lessor for the lease of the Premises; and

WHEREAS, all rights, title and interest of Kapolei Lessor in the Groundlease and the Lease, including all rights to receive the Rental Payments, have been assigned without recourse by the Kapolei Lessor to the predecessor to The Bank of New York Mellon Trust Company, N.A. (the "Prior Trustee") pursuant to an Assignment Agreement, dated as of November 1, 1998 filed as

aforesaid as Document No. 2500493 and noted on said Transfer Certificate of Title (as amended and supplemented, the "Assignment"); and

WHEREAS, in consideration of such assignment and certain other consideration, the predecessor to the Prior Trustee has previously executed and delivered certificates of participation (the "1998 Certificates"), pursuant to the Trust Agreement, dated as of November 1, 1998 (the "Prior Trust Agreement"), by and among the Lessee, the Kapolei Lessor and the Prior Trustee, in an amount equal to the aggregate principal components of the Base Rental due and payable under the Lease, each evidencing and representing a fractional undivided interest in such Base Rental payments; and

WHEREAS, all rights, title and interest of Prior Trustee in the Groundlease, the Lease and in the Prior Trust Agreement, including all rights to receive the Base Rental Payments and the Additional Rental Payments (each as defined under the Lease), have been assigned without recourse by the Prior Trustee to the BNY Western Trust Company, ("BNY"), pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "BNY Assignment") and Land Court Order No. 155626 was issued to note BNY as the successor trustee under the Prior Trust Agreement on the foregoing Transfer Certificate of Title, and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion on the foregoing Transfer Certificate of Title; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, by virtue of the BNY Assignment the Land Court Orders referenced above, The Bank of New York Mellon Trust Company, N.A., is qualified to enter into this Lease Amendment, as Lessor; and

WHEREAS, the State has now determined that it would be beneficial to the State to refund the 1998 Certificates; and

WHEREAS, in order to finance such refunding, the State and The Bank of New York Mellon Trust Company, N.A., as the current trustee (the "2009 Trustee") have determined to issue under the Prior Trust Agreement (as amended and restated by the Amended and Restated Trust Agreement, dated as of November 1, 2009 (the "2009 Trust Agreement")), certificates of participation in the Lease (the "2009 Series A Certificates"), each evidencing a fractional undivided interest in the combined amount of the Base Rental payments and certain other rental payments; and

WHEREAS, pursuant to Section 14.04 of the Lease, the Lease may be amended as may be mutually agreed by the Lessee and the Lessor, subject to the approval of the Director of Finance and the Attorney General of the State; and

WHEREAS, pursuant to Section 6.02 of the Prior Trust Agreement, the Lessee is permitted to amend the Lease, without the Prior Trustee, for the purpose of executing Additional Certificates (as such term is defined under the Prior Trust Agreement); and

WHEREAS, in connection with the above referenced refunding the Lessor and the Lessee desire to amend the Lease in order to: (1) amend the original Base Rental payment schedule; and (2) remove references to the Certificate Reserve Fund; and

WHEREAS, Lessor and Lessee under the are authorized under Prior Trust Agreement (including the 2009 Trust Agreement) and under the Constitution and laws of the State of Hawaii, including but not limited to Chapter 37D, Hawaii Revised Statutes (the "Act"), to enter into this Lease Amendment for the purposes and subject to the terms and conditions set forth herein, and the Lessee is entering into this Lease under and in compliance with the Act;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Terms not otherwise defined herein which are defined in the Lease shall have the meanings assigned to them therein.

ARTICLE II

AMENDMENTS TO LEASE

Section 2.01. References to Lessor under the Lease. All references to the Lessor under the Lease shall be amended to refer to The Bank of New York Mellon Trust Company, N.A.

Section 2.02. Amendments of Exhibit A of the Lease. Exhibit A of the Lease ("SCHEDULE OF BASE RENTAL PAYMENTS") is hereby amended and restated as set forth in Exhibit A attached hereto.

Section 2.03. Amendments Relating to the Removal of References to the Certificate Reserve Fund. All references to the Certificate Reserve Fund in the Lease are hereby removed and deleted.

Section 2.04. Amendments of Section 14.01. Section 14.01 of the Lease is hereby amended and restated as follows:

Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to:

Lessor: The Bank of New York Mellon Trust Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Administration

Lessee: State of Hawaii
Department of Accounting and General Services
1151 Punchbowl Street
Honolulu, Hawaii 96813
Attn: Comptroller

State of Hawaii
Department of Budget and Finance
250 South Hotel Street, 3rd Floor
Honolulu, Hawaii 96813
Attn: Director of Finance

Trustee: The Bank of New York Mellon Trust Company, N.A.
700 South Flower Street, Suite 500
Los Angeles, California 90017
Attention: Corporate Trust Administration

Section 2.05. Amendments of Section 6.01(a). Section 6.01(a) of the Lease is hereby amended and restated as follows:

Lessee shall pay to Lessor as base rental payments (herein called the "Base Rental") with principal and interest components, the principal being due annually and the interest being due semiannually, in accordance with the Rental Payment Schedule attached hereto as Exhibit A and made a part hereof. Base Rental shall be calculated on an annual basis, for the twelve-month periods commencing on May 1 and ending on April 30 of each year (the "rental payment period"), and each annual Base Rental shall be divided into two interest components, due on November 1 and May 1 of each rental payment period, and one principal component, due on May 1 of each rental payment period. Base Rental payments due on May 1 and November 1 shall be payable in advance on the Business Day prior to each May 1 and November 1, respectively. Any interest or other income with respect to Base Rental payments accruing prior to their due date shall belong to Lessee and shall be returned to Lessee on May 1 and November 1 of each year or credited against the next succeeding Base Rental payment. The interest components of the Base Rental payments shall be paid by Lessee as, and constitute interest paid on, the principal components of the Base Rental payments to be paid by Lessee hereunder computed on the basis of a 360-day year composed of twelve 30-day months. Each annual payment of Base Rental shall be for the use of the Premises.

ARTICLE III

MISCELLANEOUS

Section 3.01. Reaffirmation of Covenants and Representations in the Lease. The Lessor and Lessee hereby affirm the covenants and representations contained in the Lease.

Section 3.02. Execution in Counterparts. This First Amendment to Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.03. Effectiveness of Other Provisions of the Lease. Except as amended hereby, all of the other provisions of the Lease shall continue to be effective as the Lease was originally executed and delivered.

IN WITNESS WHEREOF, Lessor has executed this First Amendment to Lease in its name and Lessee has caused this First Amendment to Lease to be executed in its name, all as of the date first above written.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as Lessor

By: _____
Title:

STATE OF HAWAII

By _____
Department of Accounting and General Services

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Attorney General

EXHIBIT A
AMENDED SCHEDULE OF BASE RENTAL PAYMENTS

Date*	Principal Component	Interest Component	Total Fiscal Year Base Rental Payments
5/1/2010	\$411,546	\$653,694	\$1,065,239.46
11/1/2010	-	607,780	-
5/1/2011	573,275	664,348	1,845,401.86
11/1/2011	-	596,672	-
5/1/2012	3,146,898	658,440	4,402,010.77
11/1/2012	-	527,725	-
5/1/2013	3,285,397	590,562	4,403,684.25
11/1/2013	-	450,019	-
5/1/2014	3,440,011	515,966	4,405,995.82
11/1/2014	-	364,082	-
5/1/2015	3,609,195	429,987	4,403,264.71
11/1/2015	-	280,329	-
5/1/2016	3,779,484	346,987	4,406,800.11

11/1/2016	-	189,108	-
5/1/2017	3,962,633	254,788	4,406,529.23
11/1/2017	-	92,958	-
5/1/2018	4,162,950	155,706	4,411,614.04

*Payable on or before each April 15th or October 15th respectively

EXHIBIT B

DESCRIPTION OF REAL PROPERTY

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 11000, area 7.145 acres, more or less, as shown on Map 820, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased:

Being the land described in Transfer Certificate of Title No. 496,527 issued to the State of Hawaii, by its Board of Land and Natural Resources and set aside for public purposes under the control and management of the Department of Accounting and General Services pursuant to Executive Order No. 3736, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 286061 and noted on said Transfer Certificate of Title No. 496,527.

CONSENT, JOINDER AND AGREEMENT

In connection with a financing agreement described in Chapter 37D, Hawaii Revised Statutes, THE BOARD OF LAND AND NATURAL RESOURCES consents and joins in the foregoing First Amendment to Lease Agreement, dated as of November 1, 2009, by and between The Bank of New York Mellon Trust Company, N.A., as Lessor, and the State of Hawaii, by its Department of Accounting and General Services, as Lessee (together with that certain Lease Agreement dated as of November 1, 1998 as defined in said First Amendment to Lease Agreement, the "Amended Lease"), and the Board of Land and Natural Resources agrees that, in the event that the setting aside of the land described in Exhibit "B" of said Amended Lease for the use of the Department of Accounting and General Services is disapproved pursuant to Section 171-11 of the Hawaii Revised Statutes, or if for any other reason the fee simple interest in such land reverts in the Board of Land and Natural Resources, the fee simple interest in such land shall, notwithstanding such disapproval or reversion, be encumbered by the Amended Lease.

IN WITNESS WHEREOF, the Board of Land and Natural Resources has executed this Consent, Joinder and Agreement as of this ____ day of _____, 2009.

BOARD OF LAND AND NATURAL
RESOURCES

By _____
Name:
Title:

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Attorney General

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()

State of Hawaii Department of Accounting
and General Services
1151 Punchbowl Street
Honolulu, Hawaii 96813

Total No. of Pages: __

Tax Map Key No.: (1) 9-1-088-005

MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT

THIS MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT (this "**Memorandum**") is made this _____ day of _____, 20____ by and between THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association (the "**Lessor**"), whose address is at 700 South Flower Street, Suite 500, Los Angeles, California 90017 and the STATE OF HAWAII, by its Department of Accounting and General Services (the "**Lessee**") whose address is at 1151 Punchbowl Street, Honolulu, Hawaii 96813.

W I T N E S S E T H:

WHEREAS, KCCD LP, a Hawaii limited partnership, as lessor and Lessee as the lessee, executed a Lease Agreement dated as of November 1, 1998 (the "**Lease**"), for which a Short Form Lease dated as of November 1, 1998 was filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2500491 and noted on Transfer Certificate of Title 496,527 (the "**Short Form Lease Agreement**"); and

WHEREAS, all right, title and interest of KCCD LP as lessor under the Lease was assigned to Bank of Hawaii, as trustee, pursuant to that certain Assignment Agreement dated as of November 1, 1998, filed as aforesaid as Document No. 2500493 and noted on Transfer Certificate of Title No. 496,527; and

WHEREAS, all right, title and interest of Bank of Hawaii as lessor under the Lease, including all rights to receive the Base Rental Payments and the Additional Rental

Payments (each as defined under the Lease), was assigned without recourse to BNY Western Trust Company, ("**BNY**"), pursuant to an unrecorded Agreement of Resignation, Appointment and Acceptance, dated as of February 9, 2004 (the "**BNY Assignment**"), and Land Court Order No. 155626 was issued to note BNY as the successor trustee on said Transfer Certificate of Title; and

WHEREAS, effective November 1, 2004, BNY converted from a state chartered trust company to a national bank under the name "The Bank of New York Trust Company, N.A.", and Land Court Order No. 166935 was issued to note such conversion; and

WHEREAS, effective July 1, 2008, The Bank of New York Trust Company, N.A. changed its name to "The Bank of New York Mellon Trust Company, N.A.", and Land Court Order No. 180209 was issued to note such change in name; and

WHEREAS, the Lessor, as the current lessor under the Lease, and the Lessee have entered into a First Amendment to Lease Agreement dated as of November 1, 2009;

NOW, THEREFORE, this Memorandum witnesseth that:

A. The Lessor and Lessee have executed that certain unrecorded First Amendment to Lease Agreement dated as of November 1, 2009 (said First Amendment to Lease Agreement is hereinafter referred to as the "**First Amendment**" and the Lease together with First Amendment is hereinafter collectively referred to as the "**Amended Lease**"). The terms and conditions of the First Amendment are incorporated by reference as if herein specifically set out in full.

B. The Amended Lease constitutes a Financing Agreement under Chapter 37D of the Hawaii Revised Statutes.

C. The Amended Lease shall remain in full force and effect and shall be enforceable in accordance with its terms and is hereby ratified, confirmed and approved.

This instrument may be executed in several counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Each party has the right to rely upon a facsimile counterpart or electronic transmission of this instrument signed by the other party to the same extent as if such party received an original counterpart. For all purposes, including, without limitation, filing and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

- The remainder of this page is intentionally left blank; the next page is the signature page. -

IN WITNESS WHEREOF, the undersigned parties have executed this Memorandum of First Amendment of Lease Agreement as of the date first above written.

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.,
a national banking association

By: _____
Name:
Title:
Lessor

STATE OF HAWAII,

By: _____
Department of Accounting and General Services
Lessee

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____ Date: _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____ Date: _____
Attorney General

COUNTY OF)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this _____ page instrument entitled Memorandum of First Amendment to Lease Agreement, dated as of _____, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of California

My Commission Expires:

STATE OF HAWAII

)

) ss.:

CITY AND COUNTY OF HONOLULU

)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this _____ page instrument entitled Memorandum of First Amendment to Lease Agreement, dated as of _____, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of Hawaii
First Circuit

My Commission Expires:

CONSENT, JOINDER AND AGREEMENT

In connection with a Financing Agreement as described in Chapter 37D of the Hawaii Revised Statutes, THE BOARD OF LAND AND NATURAL RESOURCES consents and joins in the foregoing Memorandum of First Amendment to Lease Agreement (the "Memorandum"). And the Board of Land and Natural Resources agrees that, in the event that the setting aside of the land described in Exhibit "A" of the Amended Lease (as defined in the Memorandum), for the use of the Department of Accounting and General Services is disapproved pursuant to Section 171-11 of the Hawaii Revised Statutes, or if, for any other reason, the fee simple interest in such land reverts in the Board of Land and Natural Resources, the fee simple interest of such land shall, notwithstanding such disapproval or reversion, be encumbered by the Amended Lease, by the Short Form Lease Agreement (as defined in the Memorandum), by the foregoing Memorandum, and by the Lot 11000 Ground Lease described in the Amended Lease.

IN WITNESS WHEREOF, the Board of Land and Natural Resources has executed this Consent, Joinder and Agreement as of this ____ day of _____, 20 ____.

BOARD OF LAND AND NATURAL
RESOURCES

By _____
Name:
Title:

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____ Date: _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____ Date: _____
Attorney General

STATE OF HAWAII)
) ss.:
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, _____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed this _____ page instrument entitled Consent, Joinder and Agreement, dated _____, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

(Print or Type Name of Notary)

(Signature of Notary)

Notary Public, State of Hawaii
First Circuit

My Commission Expires: